IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 38 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

IQBALBHAI I MANSURI (DECD.)

Appearance:

1. INCOME TAX REFERENCE No. 38 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for the opinion of this Court in respect of assessment year 1981-82 :-

"Whether on the facts and in the circumstances of the case, the order of the Commissioner of Income-tax passed under section 263 of the Income-tax Act, 1961 was rightly set aside by the Tribunal ?"

2. We have heard Mr. Akil Kureshi, learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. The assessee had 25% share in a firm called M/s Graduate Pickers Works which he had settled in trust on 21.10.1974 as per the deed of trust dated 21.10.1974. For and from the A.Y. 1975-76, the assessee did not include the share of income from the said firm in his total income. However, he filed separate returns of the trust and the beneficiaries. Upto the assessment year 1980-81, the ITO did not accept the assessee's stand that the share of income from the said firm could not be included in his total income. The action of the ITO was upheld by the AAC. However, in further appeal before the Tribunal, the Tribunal had accepted the assessee's contention in this regard.

For the year under reference, the ITO did not include the share income from the said firm, in the total income of the assessee. The Commissioner of Income-tax took action under Section 263 of the Income-tax Act, 1961 and after following the procedure laid down in the said section, directed the ITO to include the share of income from the said firm in the total income of the assessee.

The assessee went in appeal before the Tribunal. The Tribunal passed the order giving rise to this reference and set aside the order passed by the CIT under Section 263 of the Act. For passing this order, the Tribunal followed its consolidated order dated 6.4.1987 in the cases of Mr. Ismailbhai M. Mansuri and others (including the assessee) and Mr. Yasinbhai I. Mansuri.

4. The references arising from the aforesaid consolidated order being Income-tax Reference Nos. 131 and 294 of 1987 came to be decided by this Court by judgment dated 12.9.2001. Following the said decision dated 12.9.2001 in Income-tax Reference Nos. 131 and 294 of 1987, we answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-